

Traversal of Double Patenting Rejection

Applicants respectfully traverse the rejection of claims 10-18 under the judicially created doctrine of obviousness-type double patenting for at least the following reasons.

In rejecting claims 10-18 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of Moon, the Examiner asserts that “[a]lthough the conflicting claims are not identical, they are not patentably distinct from each other because the present claims are broader in scope than the patented claims, i.e., the patent claims anticipates the present claims.”

However, Applicants respectfully submit that this obviousness-type double patenting rejection is improper at least because claims 10-18 of the present divisional application are non-elected claims resulting from a Restriction Requirement in Application No. 10/005,867 (now U.S. Patent No. 6,683,668 to Moon) that is the parent application of the present divisional application. In other words, claims 10-18 of the present divisional application were restricted from Application No. 10/005,867 as being independent and distinct under 35 U.S.C. § 121.

The third sentence of 35 U.S.C. § 121 prohibits the use of a patent issuing on an application with respect to which a requirement for restriction has been made, or on an application filed as a result of such a requirement, as a reference against any divisional application, if the divisional application is filed before the issuance of the patent. See MPEP 804.01. Thus, Applicants respectfully submit that U.S. Patent No. 6,683,668 to Moon can not be used as a reference against the present divisional application. As a result, Applicants respectfully request that the obviousness-type double patenting rejection of claims 10-18 be withdrawn.

CONCLUSION

In view of the foregoing remarks, and because no other rejections or objections remain in this application, Applicants respectfully request reconsideration and the timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicants' undersigned representative to expedite prosecution.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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Dated: June 24, 2004

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